

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2019-016-00042R

Parcel No. 0260-01-19-102-001-0

Alvin Reinboldt,

Appellant,

vs.

Cedar County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on September 13, 2019. Alvin Reinboldt was self-represented. Cedar County Assessor Cynthia Marx represented the Board of Review.

Reinboldt owns a property located at 303 Adams Avenue, Lisbon. The property's January 1, 2019 assessment was set at \$369,350, allocated as \$82,360 in land value and \$286,990 in improvement value. The property was reclassified from agricultural to residential for the 2019 assessment. (Ex. A).

Reinboldt petitioned the Board of Review claiming his property was misclassified and there was an error in the assessment. (Ex. C). The Board of Review denied the petition. (Ex. B).

Reinboldt appealed to PAAB reasserting his claim that the property is misclassified. Iowa Code § 441.37(1)(a)(3). He believes the property should be classified agricultural.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Findings of Fact

Reinboldt looked for land to purchase in and around Cedar County for three or four years. On cross-examination, he admitted that at his Board of Review hearing he stated his primary reason for purchasing the land was for a home and to build a barn, horse pasture, and to produce hay. In 2008, he purchased a 17.180-acre parcel that was unimproved and used as a hay field. The balance of the site was left in hay. That same year a 41-foot-by-64-foot pole horse barn with a five-foot canopy was added to the site. In 2009, Reinboldt built a one-story frame home with 1848 square feet of gross living area; a walk out basement; two porches and two decks; and an attached garage. (Ex. A). In 2017, Reinboldt built another 10-foot-by-16-foot pole barn. Aerial photographs of the site show it is bordered by Linn County to the west, agricultural property to the south and east, and a residential subdivision to the north. (Exs. L, M, N & O). The property had been classified as agricultural since Reinboldt purchased it in 2008.

Marx testified she became the Cedar County Assessor five years ago. She explained a 2017 Memorandum issued to Assessors by the Iowa Department of Revenue concerning agricultural classification caused her to review these classifications. (Ex. H). She explained her belief that past classification protocols and

practices had relied upon a variety of factors that were not fully consistent with Iowa law, such as the “10-acre rule”. Marx testified her appraiser visited the subject property to review it and noted, what she believed, to be a lack of agricultural use. Marx also drove by the subject, reviewed aerial photographs, and, in her opinion, the property’s primary use was not agricultural. According to Marx, she believes the prior classification was in error. Marx stated her decision was largely due to the lack of intent to profit. She testified the majority of hay produced was for Reinboldt’s own horses and horses do not produce a commodity or product, like other livestock. She also testified that Reinboldt had an “incidental farming” liability policy for his property, which bolstered her opinion the hay operation was not the property’s primary use.

Reinboldt asserts his use of the land has always been to feed and pasture his four horses and two donkeys, and raise hay for their feeding. He sells the excess hay. He maintains 10 to 13 acres of hay and approximately 5 acres of pasture. He states he has made no change to his operation and thus the classification should remain agricultural. He reported the Assessor previously told him that “hay is nothing more than a big lawn you mow twice a year” and “horses are not considered livestock,” but rather are pets. (Ex. C). He expressed frustration with trying to understand the rules and rationale for agricultural classification and complains that neither the Assessor nor the Board of Review could adequately explain the change made to his classification. Reinboldt asked Marx if he planted corn or beans on his hay acres would his property be classified as agricultural. She stated this would aid in the consideration of the agricultural classification process, but she could not guarantee a change. She also testified that hay can be considered a farm commodity. She advised Reinboldt the determination is made on a case-by-case basis and unfortunately, there are no specific guidelines contained in the Code.

Reinboldt testified he and his wife own a business selling electronic components operating as LTM Sales. He described his hay operation as historically a share-crop scenario. He contracts with the Hecks to cut and bale the hay with their machinery in exchange for approximately one-half of the crop. Reinboldt keeps the remaining portion of the crop for his horses and sells any excess. He provided seven hay invoices

reflecting the sale of 544 bales during June, July, and August of 2019 at \$4.00 a bale for a total of \$2,176. (Ex.1). He did not provide any evidence of excess hay sales for 2018 or 2017. He also submitted a letter from Jane Heck showing the volume of small bales of hay produced on the subject property. (Ex. 2).

2017: 1,090 bales over 3 cuts with estimated FMV of \$4,360

2018: 961 bales over 3 cuts with estimated FMV of \$3,844

2019: 1,175 bales over 2 cuts with estimated FMV of \$4,700

The fair market value (FMV) is the gross amount that Reinboldt could receive if he sold all bales produced at \$4 per bale. Because the Hecks keep roughly one-half for their services, these figures would need to be halved and reduced by his animals' consumption to reflect Reinboldt's potential revenue. No receipts for expenses for this operation were provided, but Reinboldt testified it is necessary to apply fertilizer and chemicals at an expense of approximately \$970 annually. Reinboldt provided pictures of approximately 600 bales of hay stored in his barn, along with pictures of the Heck's baler, accumulator, and hay rake. (Exs.5-9). He testified that while the Hecks provide most of the labor, he and his wife are actively involved in the harvest by walking behind the machinery to avoid damage to the bales and in stacking and storing the bales in their barn. The Reinboldts are solely responsible for all marketing of the excess hay.

Reinboldt reported to the Board of Review that on May 9, 2019, the Kalona Sales Barn was showing the average prices for small bale alfalfa hay ranging from \$7.50 to \$11.00 per bale. (Ex., C). He testified that he knows he could show a higher profit, but is choosing not to. He stated several of his customers are struggling famers who have helped him in the past so by pricing his bales at \$4.00 he considers himself to be "paying it back." Reinboldt testified that when asked at his Board of Review hearing about his intention to make a profit, he admitted he was "not specifically out to make a profit" on the property. He stated that, at that time, he was relying on the definition of a farm which includes "any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the year." (Ex. 3).¹ Based

¹ A written statement at the top of this exhibit indicates this definition is from the USDA, but the document does not specify the United States Code section, federal regulation, or other provision of federal law from

on this definition, Reinboldt believed his hay receipts at more than \$1,000 qualified him as a farmer. He indicated he also told the Board of Review he sold off some of the hay. Reinboldt admitted that now having the benefit of reviewing PAAB's prior rulings it is clear he needs to show an intent to profit.

Reinboldt and his accountant have recently prepared an IRS Schedule F for 2019, which according to his testimony, will show farm profit of \$1,848.² He also testified about a change in the future structure of his operation to no longer crop-share. Rather he intends to keep the entire crop, sell it for profit, and pay for cutting and baling services as an expense. He believes this will show his intent to profit more clearly than his prior practices. Reinboldt has not filed a Schedule F in the past because he did not think it was necessary and he testified he now understands his prior practice was not sufficient to establish a profit motive.

Reinboldt admitted his horses and donkeys are kept purely for pleasure. He and his wife do provide some riding and equine-education lessons at no charge for local children. They enjoy trail riding, attending rodeo events, and are members of the Cedar Rapids Horseman's Club. There is no indication of any profit motive related to these animals. Nor was any information supplied relative to the expenses associated with these animals. Apparently in an effort to support the assessor's position, the Board of Review submitted Iowa Code Chapter 267 concerning the Livestock Health Advisory Council which contains a definition of "livestock" that does not include horses.³ In contrast, Reinboldt referred to the Agricultural Improvement Act of 2018 (H.R.2) that he believes clarifies that horses are considered livestock.

which the definition is derived. The definition is not consistent with other definitions of 'farm' in federal regulations. 7 C.F.R. § 761.226; C.F.R. 48.6420-4(c). Regardless, this definition does not control whether the property qualifies as agricultural real estate under Iowa Admin. Code R. 701-71.1.

² The Schedule F was not admitted over the objection of the Board of Review. Therefore, we cannot verify whether the testimony concerning the Schedule F is accurate or whether the figure represents gross or net revenue.

³ Reinboldt contended this definition is not applicable because he believes this definition was not passed by the Iowa Legislature. Without deciding its applicability to the present case, we wish to clarify for Reinboldt that Iowa Code section 267.1 was enacted by the Iowa Legislature in 1977 and amended in 1995. Iowa Code Chapter 267 established and directs the operations of the Livestock Health Advisory Council. Exhibit F is not a publication of that Council.

Based on her review of the subject property, Marx testified she concluded the primary use was to provide a home for Reinboldt and his family, as well as his horses; not for agricultural use intended for profit. Marx expressed frustration in what she considers vagueness in the current statute and rules and her inability to provide clarification or direction to the general public. In her opinion, legislative action is needed to provide consistency and guidance.

In support of his position, Reinboldt submitted the letter of Representative Bobby Kaufmann who states “Reinboldt’s case is so clear-cut and the current ruling is so contrary to current code that I feel compelled to speak on his behalf and support him 100%”. (Ex.10). Kaufmann indicates he has “seen all [Reinboldt] is presenting to you and I support every point he makes.”

While we agree with Kaufmann there is clearly an agricultural use (hay) on what appears to be a majority of the property, our inquiry cannot stop here. Under Rule 701-71.1(3), we must closely examine the facts and determine whether this use is being undertaken in good faith with an intent to profit. Only if these additional factors are met, can the property then be classified as agricultural realty.

Analysis & Conclusions of Law

Reinboldt asserts the subject property is misclassified as residential and should instead be classified agricultural.

Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by the Iowa Department of Revenue (Department) and must also rely on other directives or manuals the Department issues. Iowa Code §§ 441.17(4), 441.21(1)(h). The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* There can be only one classification per property, except as provided for in

paragraph 71.1(5) “b”. *Id.* The determination of a property’s classification “is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). The assessment is determined as of January 1 of the year of the assessment. §§ 428.4, 441.46; Iowa Admin. Code R. 701-71.2. Particularly when not previously adjudicated, a property’s prior classification is not conclusive and binding in subsequent years because each “tax year is an individual assessment which does not grow out of the same transaction.” *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (1989). See also § 441.21(3)(b)(3).

Residential property “shall include all land and buildings which are primarily used or intended for human habitation.” R. 701-71.1(4). This includes the dwelling as well as structures used in conjunction with the dwelling, such as garages and sheds. *Id.*

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes. R. 701-71.1(3). Land and nonresidential improvements shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. *Id.* Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule. *Id.*

Although there is much dispute about whether or not horses are livestock, there is no indication that Reinboldt uses them for any intended profit.⁴ Thus, we focus on whether Reinboldt’s hay operation demonstrates his property qualifies as agricultural real estate. In particular, we believe the issue is whether Reinboldt has demonstrated a good faith effort of pursuing agricultural activity with an intent to profit. Ultimately, Reinboldt bears the burden to prove the property is misclassified. Iowa Code § 441.21(3).

⁴ We note that in at least one other instance PAAB has held that boarding horses for profit equated to an agricultural activity. *Mescher v. Dubuque Cnty. Bd. of Review*, PAAB Docket No. 09-31-0703 (Nov. 29, 2010) (affirmed by *Dubuque Cnty Bd. of Review v. Property Assessment App. Bd.*, No. CVCV099355 (Iowa Dist. Ct. for Dubuque Cnty, July 11, 2011).

Here, the record indicates the subject property has both a residential and an agricultural use. Aside from the residential use, Reinboldt keeps pleasure horses on the property and uses the excess acreage to grow hay. Prior to June 2019, the hay crop was generally used in three ways: 1) roughly one-half goes to the Hecks as payment for their services in harvesting; 2) a portion is kept for feeding Reinboldt's horses; and 3) any remainder is sold. Although a total bale count and estimate of the hay's fair market value for 2017 to 2019 was submitted, no information was provided about any hay sales prior to June 2019.

Reinboldt's reliance on USDA definitions or terms found in other federal legislation to define his operation as agricultural is misplaced. Classification of Iowa real estate is governed solely by Iowa law and the Iowa Administrative rules referenced above. So too, the Board of Review's reliance on Iowa Code Chapters other than classification rules is inappropriate.

PAAB has decided a number of cases that involve challenges to classification of properties as residential versus agricultural. A review of these decisions demonstrates the inquiry is fact-intensive and based on the unique circumstances of each case. Most recently in *Shaw v. Dallas County Board of Review*, Docket No. 2018-025-00091R (May 30, 2019), we found that the taxpayer's use of approximately one-half of his 25.54-acre site for hay production used primarily for his own horses did not establish a present use of the property as agricultural with an intent to profit. Like Reinboldt, Shaw kept horses for his family's enjoyment. He intended to donate excess bales to individuals impacted by recent flooding. Shaw's general desire to eventually breed his horses and acquire cows and other livestock, without more specificity, did not demonstrate the property was presently used with an intent to profit. Even if Shaw were to sell his excess hay, he was unable to demonstrate what, if any, profit could be gained.

Similarly in *Chapman v. Dallas County Board of Review*, Docket No. 2017-025-10178R (July 23, 2018), PAAB found the taxpayer failed to offer sufficient, convincing evidence that his use of 6 of his 9-acre site for hay crop production, his intent to breed a horse, and his future desire to develop a fruit and vegetable farmers-market type business were being done with an intent to profit. See also *Sandquist v. Dallas County*

Board of Review, Docket No. 2016-025-00118R (February 2, 2016) (use of 10 acres of 15.17-acre site for hay production yielding a Schedule F net profit of \$290 was insufficient to establish the primary use of the property as agricultural or an intent to profit.)

In *Miller v. Scott Cnty. Bd. of Review*, PAAB Docket No. 2015-082-01024R, PAAB found that Miller's 10.22-acre property did not qualify as agricultural real estate due to insufficient evidence demonstrating an intent to profit. Only 3.6-acres of Miller's property was used for agricultural purposes and he indicated he made very little money from selling produce, but donated and used it for household consumption. PAAB believed the small farmable area, minimal-income producing capacity, and lack of any plan to bring the operation into profitability indicated a lack of an intent to profit. PAAB's Order was recently affirmed by the Iowa Court of Appeals. *Miller v. PAAB*, 2019 WL 3714977 (Iowa Ct. App. Aug. 7, 2019).

PAAB has changed property classifications from residential to agricultural when the evidence demonstrates a good faith intent to profit from the agricultural use. PAAB changed the classification of a 10.55-acre parcel in Runnells that was used for alfalfa production and horse grazing, in addition to serving as the owner's primary residence. *Jungblut v. Polk County Board of Review*, Docket No. 07-77-0814 (July 24, 2008), *aff'd*, *Polk Cnty Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155273 (Iowa Ct. App. Aug. 11, 2010). Jungblut had entered into leases with local farmers to plant and harvest hay, retaining half for his horses. He described plans and improvements made to the property to support a horse breeding operation and had prior years of farming income and loss information and estimated future income for horse breeding. PAAB considered the evidence presented to be substantial.

Evidence was also considered substantial in *Mays v. Muscatine Cnty. Bd. of Review*, Docket No. 2017-070-010175R (March 23, 2019) where the taxpayer supplied documentation of almost \$10,000 of income from the sale of berries, eggs, poultry, hogs, and cattle produced on a 2.20-acre parcel to approximately 500 customers. See also *Reisz v. Harrison County Board of Review*, Docket No. 2015-043-00497R (July 8, 2016) (extensive research and detailed business plan along with sales contracts

supported finding that 8 acres devoted to aronia berry production on a 15-acre parcel constituted agricultural use intended for profit.)

While there are plenty of similarities between the above cases and this appeal – we find the Shaw, Chapman and Sandquist cases are most similar to Reinboldt’s use of his property and this case warrants the same result. The evidence in the record does not convince us that, as of January 1, 2019, Reinboldt’s hay operation was conducted with an intent to profit. The record fails to disclose how many bales of hay were sold prior to 2019 or the profit resulting therefrom. Tellingly, when asked at his Board of Review hearing about his intent to profit, Reinboldt admitted he was “not specifically out to make a profit.” We find this admission more convincing than the post-June 2019 sales information Reinboldt provided. We do, however, acknowledge those sales may be relevant to his classification in future years.⁵

The controlling law for classification in Iowa is Administrative Code Rule 701–71.1. The subparagraphs therein dictate the requirements for proper classification. Agricultural classification requires not only that the primary use of the property be for an agricultural purpose, but also that the use be undertaken in good faith with an intent to profit. This case, and those previously cited, provide some guidance about the contours of those requirements and the facts necessary to demonstrate an intent to profit.

Viewing the record as a whole, we find Reinboldt failed to submit sufficient evidence that the present use of his property as of January 1, 2019, was agricultural with an intent to profit and thus he has failed to establish that the subject property was misclassified.

Order

PAAB HEREBY AFFIRMS the Cedar County Board of Review’s action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2018).

⁵ We note that when the classification of a property has been adjudicated by PAAB, there is a presumption that the property’s classification has not changed for each of the four subsequent assessment years, unless a subsequent such adjudication of property’s classification has occurred. Iowa Code § 441.21(3)(b)(3). If such a presumption exists, the burden of demonstrating a change in use shall be upon the person asserting a change to the property’s classification. *Id.*

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

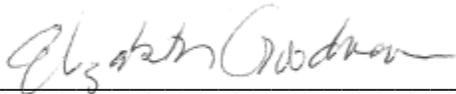
Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.38B and Chapter 17A.



Karen Oberman, Board Member



Dennis Loll, Board Member



Elizabeth Goodman, Board Member

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